

REMARKS

This is a response to the Office Action mailed September 6, 2007. Claims 1-4, 6-9, 15-18, 25-29, 32, 33, and 36-38 are pending. Claims 10-14, 19-24, 30, 31, 34, and 35 were previously cancelled and claim 5 is cancelled by this response. Claims 1, 37, and 38 have been amended by this response.

In the Office action, the Examiner stated that claims 25-29, 32, 33, and 36 are allowable; claims 1-9 and 37-38 are rejected under 35 U.S.C. 103(e) as being anticipated by Bayer; and claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable of Bayer.

Amendment of Claims 1, 37, and 38

Under the heading entitled *Allowable Subject Matter* the Examiner stated that the prior art of record fails to teach an earpiece comprising a generally arcuate rib and a generally vertical rib formed so as to generally define the letter D, and also comprises a boss having a bore formed therethrough, the boss being formed to the generally vertical rib; and wherein the earpiece is sufficiently symmetrical to be configured for use in either the right or left ear, as substantially described and connected with the other functional language of the claims.

Independent claims 1, 37, and 38 have been amended to recite "a symmetric earpiece". Claim 1 additionally recites "the earpiece comprising at least one generally arcuate rib and at least one generally vertical rib, the generally vertical rib extending between points proximate ends of the arcuate rib." Claim 37 additionally recites "the earpiece comprising two ribs that are generally configured to define a D." Claim 38 additionally recites "the earpiece comprising a boss having a bore formed therethrough, the boss being configured to extend at least partially into the ear canal."

Application believes that the language of amended independent claims 1, 37, and 38 conforms substantially to that which the Examiner stated above as not be taught by the prior art. As such, it is respectfully submitted that independent claims 1, 37, and 38, as well as claims 2-4, 6-9, and 15-18 that depend therefrom, are allowable.

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10/769,158CONCLUSION

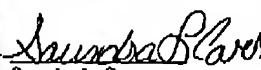
In view of the foregoing, Applicant respectfully submits that claims 1-4, 6-9, 15-18, 25-29, 32, 33, 36, 37, and 38 are in condition for immediate allowance.

Reconsideration and an early allowance are therefor respectfully requested.

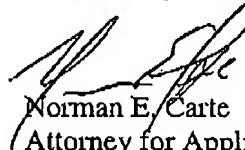
If the Examiner has any questions or concerns, a telephone call to the undersigned at (949) 752-7040 is welcomed and encouraged.

## Certification of Facsimile Transmission

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

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Saundra L. Carr Date of Signature

Respectfully submitted,

  
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